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Remarks

Claims 1-58 are pending in this Application, with claims 22-32, 39-46, 48 and 50-58 being allowed. By this Amendment, no claims have been amended, canceled or added. Claims 1-58 are at issue in this Application.

Applicants thank the Examiner for speaking with Applicants' counsel on Monday, August 18, 2003. During the telephone conversation, the Examiner agreed to contact Applicants' counsel before acting on this Reply.

CLAIM REJECTIONS - 35 U.S.C. §102

In paragraph two of the Office Action, claims 1-3, 13, 17-19, 21, 33, 34, 47, and 49 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,400,026 to Brown ("Brown"). Applicants respectfully traverse this rejection.

Independent claim 1 is directed to a tilt-latch for a sash window disposed within opposed guide rails on a master frame and requires, among other things, a housing adapted to be supported by the top rail, the housing having an outward end opening and a cover; a latch bolt disposed within the housing and having a nose adapted for engaging a respective one of the guide rails; and, an actuator connected to the latch bolt and sized to be positioned over the entire cover.

As explained in Applicants' Reply to the *previous* Office Action, Brown does not anticipate claim 1 because it does not disclose each and every element of that claim. *In re Lange*, 209 U.S.P.Q. 288 (CCPA 1981) (in order to anticipate, the reference must describe or disclose all of the limitations of the claims). Specifically, Brown does not disclose or suggest independent claim 1's requirement of *a housing having a cover*. In support of this rejection, the Examiner construed

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skill
can be
a cover
- similar structure
may perform
operation

Brown's projection 80 as a "cover." Consistent with the previous Reply, the projection 80 is not the claimed cover because: (i) Brown has positively identified the depending structure 80 as a projection; (ii) Brown specifically details the function of the projection 80 - - to stabilize and/or secure the base member 26 on a sash (Col. 6, lns. 5-10); and, (iii) the Examiner's construction radically alters the operation of Brown's latch 20. When properly construed, Brown's latch 20 lacks the claimed housing cover and as a result, claim 1 is patentably distinct.

As another separate and independent ground for overcoming the Section 102 rejection, Brown does not disclose or suggest claim 1's requirement of *an actuator sized to be positioned over the entire cover*. Applicants' written disclosure and drawings (see Figs. 1-7) detail that the actuator is sized to be positioned over the entire cover. The Examiner's interpretation of the bolt 28 and the upward projection 78 as the claimed actuator runs contrary to Brown's disclosure since the bolt 28 is repeatedly described as a slide member and since the upward projection 78 is described as "a manually engageable upward projection...to facilitate movement" of the bolt 28. (Col. 3, lns. 55-75) (Col. 6, lns. 1-5). Thus, one of ordinary skill recognizes that a user of Brown's latch 20 would only grasp the projection 78 to actuate the bolt 28. When Brown is properly construed, it is apparent that the actuator 78 is not sized to be positioned over the entire cover, as required by claim 1 because: (i) as explained in the preceding paragraph, the base member 26 lacks a cover; (ii) the actuator 78 only extends from the second end 62 of the bolt 28; and (iii) the actuator 78 is positioned between the side rails 52 of the base member 26, not over all of the structure of the base member 26. For each of these reasons, Brown fails to disclose or suggest all elements of independent claim 1. Consequently, claim 1 is patentably distinct and is neither anticipated by nor suggested by Brown.

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Claims 2, 13, 17-19, and 21 depend from independent claim 1 and thereby require all of the limitations of that claim. For the reasons stated above with respect to claim 1, these claims are patentably distinct and are neither anticipated by nor suggested by Brown.

Claim 3 depends from claim 1 and further requires that the cover have opposed longitudinal peripheral edges and the actuator has opposed depending longitudinal flanges, the flanges being positioned over the peripheral edges. For the reasons detailed in the previous Reply and the reasons stated above with respect to claim 1, claim 3 is patentably distinct and is neither anticipated by nor suggested by Brown.

Independent claim 33 is directed to an actuator for a tilt-latch for a sash window and requires, among other things, an actuator having an elongated body connected to the latch bolt and sized to be positioned over the entire cover. Consistent with that presented in the previous Reply and for the reasons explained above with respect to independent claim 1, independent claim 33 is patentably distinct and is neither anticipated by nor suggested by Brown.

Claim 34 depends from independent claim 33 and thereby requires all of the limitations of that claim. For the reasons stated above with respect to claim 33, claim 34 is patentably distinct and is neither anticipated by nor suggested by Brown.

Independent claim 47 is directed to a tilt-latch for a sash window, and requires among other things, an actuator connected to the latch bolt and sized to be positioned over the entire cover, the actuator having a control button. Independent claim 49 is directed to a tilt-latch for a sash window, and requires among other things, an actuator connected to the latch bolt and sized to be positioned over the entire cover. Consistent with that presented in the previous Reply and for the reasons

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explained above with respect to independent claim 1, independent claims 47 and 49 are patentably distinct and are neither anticipated by nor suggested by Brown.

In paragraph three of the Office Action, claims 33 and 34 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,669,639 to Lawrence ("Lawrence"). Applicants respectfully traverse this rejection.

As explained in the Applicants' previous Reply, Lawrence does not anticipate independent claim 33 because it does not disclose or suggest a tilt-latch with *an actuator having an elongated body connected to the latch bolt and sized to be positioned over the entire cover*. Applicants' written disclosure and drawings (see Figs. 1-7) detail that the actuator is dimensioned to be positioned over the entire cover. On page 3 of the Office Action, the Examiner construed the top section 30 of Lawrence's latch mechanism 16 as the claimed elongated actuator body and stated that it was "...connected to the latch bolt" without explaining how or where that connection was made. This interpretation of Lawrence is erroneous in view of Lawrence's disclosure. First, the top section 30 is a stationary structure that forms an upper portion of the latch 16. Referring to Fig. 7, the top section 30 has two depending pins 26 that are received by corresponding holes in the bottom section 31 (see FIG. 9) to secure the top section 30 to the bottom section 31 -- not the bolt 20. As a result, the top section 30 is not an actuator. Second, one of ordinary skill in the art recognizes that if the top section 30 was connected to the bolt 20 in the manner contemplated by the Examiner, movement of bolt 20 would be precluded, thus negating a key aspect of the latch 16. In the simplest of terms, the Examiner's interpretation of Lawrence would prevent the latch 16 from functioning as intended. Accordingly, Lawrence does not disclose or suggest a tilt-latch having an actuator connected to the

being connected
does not rule
out
movement

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latch bolt and sized to be positioned over the entire cover. Thus, independent claim 33 is patentably distinct and is neither anticipated by nor suggested by Lawrence.

Claim 34 depends from independent claim 33 and thereby require all of the limitations of that claim. For the reasons stated above with respect to claim 33, claim 34 is patentably distinct and is neither anticipated by nor suggested by Lawrence.

CLAIM REJECTIONS - 35 U.S.C. §103

In paragraph five of the Office Action, claims 15, 16, and 38 were rejected under 35 U.S.C. §103 as being unpatentable over Brown in view of Lawrence. Applicants respectfully traverse this rejection.

On page 6 of the final Office Action, the Examiner presented an alleged motivation to combine the references: "...it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. One of ordinary skill in the art at the time the invention was made would recognize the advantages of using zinc for the actuator so that it does not [sic] wear easily." In addition to being an insufficient motivation to combine, the Examiner did not identify the source of the alleged motivation. Applicants recognize that Lawrence discloses forming *the bottom section* of the latch 16 "...from metal such as cast zinc or suitable plastics, depending on the particular application and cost consideration." (Col. 3, lns. 48-50). Significantly, Lawrence does not disclose using zinc to form the actuator. Because Lawrence only discloses forming the bottom section from metal, Lawrence teaches away from using zinc to form the actuator. As a result, it is improper to combine Lawrence and Brown where the

where?

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references teach away from their combination. *In re Graselli*, 218 USPQ 769, 779 (Fed. Cir. 1983).

As another separate and independent ground for reversing the Section 103 rejection, Applicants submit that the combination of Brown and Lawrence fails to suggest all of the limitations of claim 1, from which claims 15 and 16 depend. As explained above in the Section 102 analysis (see page 4), one of ordinary skill in the art recognizes that Brown does not disclose or suggest an actuator sized to be positioned over the entire cover of the housing. As also explained above (see page 8), Lawrence does not disclose or suggest an actuator sized to be positioned over the entire cover of the housing. Accordingly, the combination of Brown and Lawrence neither discloses nor suggests all of the limitations of claim 15 and 16, and therefore, cannot establish a prima facie case of obviousness. For each of these reasons, claims 15 and 16 are patentably distinct and are not rendered obvious by the combination of Brown and Lawrence.

Claim 38 depends from independent claim 33 and thereby requires all of the limitations of that claim, including the actuator sized to be positioned over the entire cover. For the reasons stated in the preceding paragraphs with respect to claims 15 and 16, claim 38 is patentably distinct and is not rendered obvious by the combination of Brown and Lawrence.

In paragraph six of the Office Action, claim 38 was rejected under 35 U.S.C. §103 as being unpatentable over Lawrence. Applicants respectfully traverse this rejection.

Applicants submit that the Examiner has failed to establish a prima facie case of obviousness because Lawrence fails to suggest all of the limitations of claim 38, from which claim 33 depends.

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As also explained above (see page 8), Lawrence does not disclose or suggest an actuator sized to be positioned over the entire cover of the housing. Thus, Lawrence does not disclose or suggest all of the limitations of claim 38, and therefore, cannot establish a prima facie case of obviousness. Furthermore and as explained above, Lawrence teaches away from the modification contemplated by the Examiner. Accordingly, claim 38 is patentably distinct and is not rendered obvious by Lawrence.

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CONCLUSION

In view of the foregoing, Applicants believe the Application is in a condition for allowance, and respectfully request early notice of the same. Applicants request that the Examiner call the undersigned attorney upon receipt of this Reply, as discussed during the telephone with Applicants' counsel on August 18, 2003.

Respectfully submitted,

Date: August 19, 2003

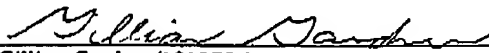
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I hereby certify that this document is being facsimile transmitted to Examiner John B. Walsh, Art Unit No. 3676, at the U.S. Patent and Trademark Office on August 19, 2003, to Fax No. 703.872.9327.


Gillian Gardner/181279.1

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